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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 JOSEPH J.,

9 Plaintiff,

Case No. C19-5593-MLP

10 v.

ORDER

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

13  
14 **I. INTRODUCTION**

15 Plaintiff seeks review of the denial of his application for Supplemental Security Income.

16 Plaintiff contends the administrative law judge (“ALJ”) erred in (1) finding that he did not meet

17 Listings 12.08 and 12.15; (2) discounting his subjective testimony; (3) discounting certain

18 medical opinions; and (4) and relying on the vocational expert (“VE”) testimony at step five.<sup>1</sup>

19 (Dkt. # 12 at 1.) As discussed below, the Court AFFIRMS the Commissioner’s final decision and

20 DISMISSES the case with prejudice.

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22 <sup>1</sup> Plaintiff’s opening brief also contends that these enumerated errors contributed to overall error in the  
23 ALJ’s residual functional capacity (“RFC”) assessment and step-five findings, but the brief does not  
address this allegation separately in the body of the brief. (Dkt. # 12 at 1.) Accordingly, the Court will  
address the enumerated errors to determine if the ALJ’s decision is free of harmful legal error and  
supported by substantial evidence.

## II. BACKGROUND

Plaintiff was born in 1963, has a GED, and previously worked as a construction laborer. AR at 497, 499. Plaintiff was last gainfully employed in 2009. *Id.* at 724.

In March 2016, Plaintiff applied for benefits, alleging disability as of March 15, 2009.<sup>2</sup> AR at 551, 694-702. Plaintiff's applications were denied initially and on reconsideration, and Plaintiff requested a hearing. *Id.* at 600-03, 607-16. After the ALJ conducted a hearing on October 17, 2017 (*id.* at 488-550), the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 305-17.

Utilizing the five-step disability evaluation process,<sup>3</sup> the ALJ found:

Step one: Plaintiff has not engaged in substantial gainful activity since March 25, 2016.

Step two: Plaintiff's lumbar spine degenerative disc disease, degenerative joint disease, post-traumatic stress disorder ("PTSD"), and antisocial personality disorder are severe impairments.

Step three: These impairments do not meet or equal the requirements of a listed impairment.<sup>4</sup>

RFC: Plaintiff can perform light work with additional limitations: he can occasionally climb ladders, ropes, and scaffolds. He can occasionally crawl. He can have occasional exposure to vibration. He can have occasional exposure to extreme cold temperatures. He is capable of understanding, remembering, and applying short, simple instructions. He can perform routine tasks and make simple decisions. He can have no interaction with the general public and can have only occasional interaction with co-workers.

Step four: Plaintiff cannot perform past relevant work.

Step five: As there are jobs that exist in significant numbers in the national economy that Plaintiff can perform, Plaintiff is not disabled.

AR at 305-17.

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<sup>2</sup> At the administrative hearing, Plaintiff amended his alleged onset date to March 25, 2016. AR at 501-02.

<sup>3</sup> 20 C.F.R. § 416.920.

<sup>4</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the  
2 Commissioner's final decision. AR at 1-7. Plaintiff appealed the final decision of the  
3 Commissioner to this Court. (Dkt. # 4.)

### 4 **III. LEGAL STANDARDS**

5 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social  
6 security benefits when the ALJ's findings are based on legal error or not supported by substantial  
7 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a  
8 general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the  
9 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)  
10 (cited sources omitted). The Court looks to "the record as a whole to determine whether the error  
11 alters the outcome of the case." *Id.*

12 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such  
13 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.  
14 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th  
15 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical  
16 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d  
17 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may  
18 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*  
19 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one  
20 rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

### 21 **IV. DISCUSSION**

#### 22 **A. The ALJ Did Not Err at Step Three**

23 Plaintiff contends that the ALJ erred in finding that he did not satisfy Listings 12.08 and

1 12.15. (Dkt. # 12 at 11-13.) Plaintiff notes that in finding he did not satisfy those listings, the  
2 ALJ relied on the 2016 and 2017 opinions of examining psychologist Kimberly Wheeler, Ph.D.  
3 *See* AR at 309-10. Plaintiff argues that the ALJ erred in construing Dr. Wheeler’s opinions as  
4 consistent with the ALJ’s finding that Plaintiff had “moderate” limitations in the ability to  
5 concentrate, persist, or maintain pace. (Dkt. # 12 at 12-13.) According to Plaintiff, the ALJ  
6 should have construed Dr. Wheeler’s opinions as suggesting a “marked” limitation in that  
7 category. (*Id.*) If the ALJ had found that Plaintiff had marked limitations in two of the  
8 “paragraph B” criteria applicable to Listings 12.08 and 12.15, the ALJ would have found that  
9 Plaintiff met those listings. *See* AR at 309.

10 Plaintiff’s step three argument is essentially an invitation to reweigh Dr. Wheeler’s  
11 opinions in the manner he suggests, but the Court declines to do so, particularly because, as  
12 explained *infra*, the Court finds no error in the ALJ’s reasons provided for discounting Dr.  
13 Wheeler’s opinions. Plaintiff’s reading of Dr. Wheeler’s opinions may be reasonable, but  
14 Plaintiff has not shown that the ALJ’s findings were unreasonable, and therefore has failed to  
15 establish harmful legal error in the ALJ’s step-three findings. *See Morgan v. Comm’r of Social*  
16 *Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999) (“Where the evidence is susceptible to more than  
17 one rational interpretation, it is the ALJ’s conclusion that must be upheld.”).

18 **B. The ALJ Did Not Err in Assessing Plaintiff’s Testimony**

19 The ALJ discounted Plaintiff’s subjective allegations, finding that (1) the objective  
20 medical evidence did not support his allegations; (2) Plaintiff’s statements contained  
21 inconsistencies; (3) the evidence showed that Plaintiff’s mental symptoms improved with  
22 medication and counseling; (4) Plaintiff sought minimal treatment for his back pain; and (5)  
23 Plaintiff’s activities do not suggest any limitations other than social limitations, which were

1 included in the RFC assessment. AR at 311-15. In the Ninth Circuit, and ALJ's reasons to  
2 discount a claimant's subjective allegations must be clear and convincing. *See Burrell v. Colvin*,  
3 775 F.3d 1133, 1136-37 (9th Cir. 2014).

4 Plaintiff raises several concerns with the ALJ's reasoning. First, Plaintiff argues that the  
5 ALJ erred in finding that his statements contain inconsistencies, because he tended to make  
6 "grandiose statements" as a result of his mental impairments (PTSD and antisocial personality  
7 disorder). (Dkt. # 12 at 16.) But the ALJ did not cite "grandiose statements" as examples of  
8 inconsistencies: the ALJ cited Plaintiff's reports of improvement with treatment and looking for  
9 work, as well as when he denied experiencing hallucinations. AR at 313 (citing *id.* at 919-75,  
10 1033-85, 1013-14, 1156-1256). To the extent that Plaintiff contends that his report to his  
11 provider that he was "doing better than [he had] in years" (*id.* at 1249) constitutes a "grandiose  
12 statement," as opposed to a true inconsistency, that could be a reasonable reading of the record,  
13 but the ALJ asked Plaintiff about this statement at the hearing and Plaintiff reported that he "felt  
14 that way" "at the time." *See id.* at 511. Plaintiff's explanation does not suggest that it was a  
15 "grandiose statement," and Plaintiff has not shown that the ALJ's interpretation is unreasonable.  
16 Thus, the Court finds no error in the ALJ's finding regarding inconsistent statements.

17 Plaintiff also suggests that the ALJ "hinted" that his drug and alcohol use undermined his  
18 disability claim (dkt. # 12 at 16), but Plaintiff does not point to any specific findings and the  
19 Court does not see any findings or even hints of findings in this regard in the ALJ's assessment  
20 of Plaintiff's testimony. The Court finds no basis for Plaintiff's suggestion that the ALJ erred in  
21 considering evidence related to drug abuse and alcohol.

22 Plaintiff also contends that the ALJ erred in finding that his symptoms improved with  
23 treatment, because they did not entirely resolve, but instead waxed and waned. (Dkt. # 12 at 16.)

1 The Commissioner disagrees, describing the record as showing “a longitudinal pattern of  
2 improvement,” as opposed to cycles of debilitating symptoms. (Dkt. # 13 at 14.) The Court finds  
3 that substantial evidence supports the ALJ’s interpretation of the record as showing improvement  
4 with treatment: although the record does indicate that Plaintiff’s symptoms flared at times, those  
5 flares were linked to a lack of medication/treatment or situational stressors such as family  
6 turmoil, quitting smoking, or the death of a pet. *See, e.g.*, AR at 1015-16, 1023-24, 1027-28,  
7 1093, 1172, 1187, 1190, 1205-06, 1218-19, 1229, 1232, 1235, 1248 (medications increased to  
8 reduce nightmares). As found by the ALJ, Plaintiff repeatedly reported improvement with  
9 medication. *See generally id.* at 1086-1111, 1156-1251. Plaintiff has not shown that the ALJ  
10 erred in finding that his symptoms improved with treatment, or in discounting his allegation of  
11 disability on that basis. *See Wellington v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017)  
12 (“[E]vidence of medical treatment successfully relieving symptoms can undermine a claim of  
13 disability.”).

14 Lastly, Plaintiff challenges the ALJ’s reliance on his daily activities, contending that his  
15 social limitations were marked despite the ALJ’s finding otherwise. (Dkt. # 12 at 17-18.) The  
16 ALJ found that Plaintiff’s social deficits “improved with treatment and the claimant’s sheer will  
17 to improve” (AR at 315), and this finding is supported by substantial evidence. *See generally id.*  
18 at 1086-1111, 1156-1251 (counseling notes). To the extent Plaintiff contends that his activities  
19 do not demonstrate an ability to work (dkt. # 12 at 17-18), that may be true, but the ALJ did not  
20 find that his activities demonstrated an ability to work, and thus this line of argument is  
21 inapposite. The ALJ found that Plaintiff’s activities demonstrate that “his biggest issue appears  
22 to be getting along with people,” which Plaintiff does not dispute, and the ALJ stated that the  
23

1 social limitations in the RFC assessment accommodate these limitations. AR at 315. Plaintiff has  
2 not shown that the ALJ erred in considering his daily activities.

3 **C. The ALJ Did Not Err in Discounting Certain Medical Opinions**

4 Plaintiff argues that the ALJ erred in discounting opinions provided by Dr. Wheeler and  
5 examining psychologist William Chalstrom, Ph.D. The Court will address each disputed opinion  
6 in turn.

7 *1. Legal Standards*

8 In general, more weight should be given to the opinion of a treating doctor than to a non-  
9 treating doctor, and more weight to the opinion of an examining doctor than to a non-examining  
10 doctor. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not contradicted by another  
11 doctor, a treating or examining doctor's opinion may be rejected only for "clear and convincing"  
12 reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)). Where  
13 contradicted, a treating or examining doctor's opinion may not be rejected without "specific and  
14 legitimate reasons' supported by substantial evidence in the record for so doing." *Lester*, 81 F.3d  
15 at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

16 *2. Dr. Wheeler's Opinions*

17 Dr. Wheeler examined Plaintiff in 2016 and 2017, completing DSHS forms on both  
18 occasions describing his symptoms and limitations. AR at 919-23, 1252-56. Dr. Wheeler had  
19 previously examined Plaintiff in 2011, although her opinion report from that examination is not  
20 in the record. *Id.* at 919. Dr. Wheeler documented significant improvement since 2011, which  
21 Plaintiff attributed to medication, but Dr. Wheeler opined that some marked limitations still  
22 persisted. *Id.* at 919-23. Dr. Wheeler's 2017 opinion indicates similar marked limitations in areas  
23 of workplace functioning. *Id.* at 1252-56.

1           The ALJ gave little weight to Dr. Wheeler’s 2016 opinion, finding the moderate and  
2 marked limitations she indicated to be inconsistent with Plaintiff’s “good response to medication  
3 early on in his treatment.” AR at 314. The ALJ also noted that Dr. Wheeler’s mental status  
4 examination was normal other than for remote memory abilities (*id.* at 922-23), and the ALJ  
5 stated that he accounted for the concentration and impulsivity issues mentioned by Dr. Wheeler  
6 in the RFC assessment, which limits Plaintiff to following short, simple instructions; completing  
7 routine tasks; making simple decisions; and occasional interaction with co-workers and no  
8 interaction with the general public (*id.* at 310).

9           The ALJ also gave little weight to Dr. Wheeler’s 2017 opinion, finding that her opinion  
10 that Plaintiff’s limitations were largely unchanged since 2016 was inconsistent with the  
11 “overwhelming evidence of [Plaintiff’s] excellent response to treatment[.]” AR at 314. The ALJ  
12 noted that treatment notes from the same time period as Dr. Wheeler’s examination indicated  
13 that Plaintiff denied mood disturbance, depression, nightmares, or hallucinations. *Id.* The ALJ  
14 also noted that Dr. Wheeler’s opinion suggests that Plaintiff was independent in his activities of  
15 daily living and had a normal mental status examination; that he exercised “good judgment” in  
16 avoiding people “for his own good,” but could still “go to town when he needed to”; and that he  
17 had adequate cognitive skills and no sleep complaints. *Id.*

18           Plaintiff argues that the ALJ erred in finding that Dr. Wheeler’s normal or largely normal  
19 mental status examinations undermined her conclusions, because the mental status examinations  
20 were not actually normal. (Dkt. # 12 at 10.) Plaintiff points to findings related to his  
21 concentration deficits and his impulsivity (*id.*), but does not explain why the ALJ’s RFC  
22 assessment does not account for those limitations, as the ALJ explicitly stated. AR at 314 (“The  
23 above [RFC] includes adequate limitations for these issues (concentration and impulsivity).”).

1 The ALJ's restrictions to simple work and simple judgments, with restricted social interaction,  
2 reasonably address the findings mentioned by Plaintiff, and he has not shown or even argued that  
3 the ALJ's RFC is inadequate.

4 Plaintiff also challenges the ALJ's finding that the treatment record was inconsistent with  
5 Dr. Wheeler's conclusions, contending that the records do not show sustained improvement, as  
6 suggested by the ALJ and the Commissioner. (Dkt. # 14 at 2-3.) As discussed *supra*, however,  
7 the Court's reading of the treatment records is consistent with the ALJ's interpretation. Although  
8 Plaintiff's symptoms did flare at times, when certain factors were present (such as situational  
9 stressors, lack of medication, quitting smoking), the longitudinal record indicated that Plaintiff's  
10 symptoms overall improved with treatment. The ALJ did not err in finding Dr. Wheeler's  
11 opinions to be inconsistent with the treatment notes, or in discounting the opinions on that basis.  
12 *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (not improper to reject an opinion  
13 presenting inconsistencies between the opinion and the medical record).

14 3. *Dr. Chalstrom's Opinion*

15 Dr. Chalstrom examined Plaintiff in March 2015, which predates Plaintiff's amended  
16 alleged onset date by a year. AR at 865-69. The ALJ discounted Dr. Chalstrom's opinion as  
17 outside the adjudicated period, rendered during the time before Plaintiff started receiving  
18 significant health treatment. *Id.* at 315. The ALJ also noted that Dr. Chalstrom diagnosed a  
19 learning disorder based on reported illiteracy, but performed no testing to confirm this condition.  
20 *Id.*

21 Plaintiff argues that the ALJ erred in discounting Dr. Chalstrom's opinion as predating  
22 the adjudicated period, because it post-dated his alleged onset date. (Dkt. # 12 at 14-15.) Plaintiff  
23 overlooks that he amended his alleged onset date at the administrative hearing, to March 25,

1 2016. AR at 501-02. Thus, the ALJ did not err in discounting Dr. Chalstrom’s opinion as  
2 predating the alleged onset date. *See Carmickle v. Comm’r of Social Sec. Admin.*, 533 F.3d 1155,  
3 1165 (9th Cir. 2008) (“Medical opinions that predate the alleged onset of disability are of limited  
4 relevance.”).

5 Furthermore, the ALJ discounted Dr. Chalstrom’s opinion as rendered before Plaintiff’s  
6 mental health treatment began, and Plaintiff provides no challenge to this line of reasoning in his  
7 opening brief. (Dkt. # 12 at 14-15.) To the extent that he does challenge this reasoning for the  
8 first time in his reply brief, Plaintiff argues that even after he began treatment he was still unable  
9 to work, as indicated in Dr. Wheeler’s subsequent opinions. (Dkt. # 14 at 5-6.) Nonetheless, the  
10 ALJ was entitled to discount Dr. Chalstrom’s opinion based on Plaintiff’s lack of treatment at the  
11 time of the examination. *See, e.g., Blacksher v. Berryhill*, 762 Fed. Appx. 372, 374 (9th Cir. Feb.  
12 26, 2019) (holding that the ALJ properly discounted a treating psychologist’s opinion due to the  
13 claimant’s “gaps in treatment”); *Evans v. Berryhill*, 759 Fed. Appx. 606, 608 (9th Cir. Jan. 7,  
14 2019) (affirming an ALJ’s rejection of a treating physician’s opinion in part because plaintiff  
15 “received only sporadic treatment for his condition”).

16 Plaintiff points to certain limitations mentioned in Dr. Chalstrom’s opinion report, and  
17 contends that the ALJ erred in failing to include those limitations in the RFC assessment. (Dkt. #  
18 12 at 15.) But the ALJ discounted Dr. Chalstrom’s opinion for the specific, legitimate reasons  
19 mentioned in the previous paragraph, *supra*, and thus did not err in failing to account for the  
20 limitations Dr. Chalstrom indicated in the discounted opinion.

#### 21 **D. The ALJ Did Not Err at Step Five**

22 At step five, the Commissioner bears the burden to show that a claimant is not disabled  
23 because he or she can perform other work that exists in significant numbers in the national

1 economy. 20 C.F.R. § 416.960(c)(2). In this case, the ALJ described a hypothetical individual  
2 with the restrictions listed in the RFC assessment, and the VE testified that such a person could  
3 perform the representative occupations of price marker, products assembler, and electronics  
4 worker. AR at 542-48.

5 Plaintiff argues that there is a conflict between the VE's testimony that he could perform  
6 those jobs and the definition of those jobs in the Dictionary of Occupational Titles ("DOT"). The  
7 DOT raises a rebuttable presumption as to job classification. *See Johnson v. Shalala*, 60 F.3d  
8 1428, 1435-36 (9th Cir. 1995). Under Social Security Ruling 00-4p, an ALJ has an affirmative  
9 responsibility to inquire as to whether a VE's testimony is consistent with the DOT and, if there  
10 is a conflict, determine whether the VE's explanation for such a conflict is reasonable. *Massachi*  
11 *v. Astrue*, 486 F.3d 1149, 1152-54 (9th Cir. 2007).

12 According to Plaintiff, the VE's testimony conflicts with the DOT because each of these  
13 jobs are defined to require "level-two" reasoning abilities, and yet the ALJ restricted Plaintiff to  
14 following "short, simple instructions[.]" "Level-two" reasoning is defined to require the ability to  
15 "[a]pply commonsense understanding to carry out detailed but uninvolved written or oral  
16 instructions. Deal with problems involving a few concrete variables in or from standardized  
17 situations." DOT, App. C. The Ninth Circuit has found a conflict between a restriction to  
18 "simple, routine, or repetitive work" and level-*three* reasoning, but none of the jobs here involve  
19 level-three reasoning. *See Zavalin v. Colvin*, 778 F.3d 842, 846-48 (9th Cir. 2015). The Ninth  
20 Circuit has also found that a limitation to performing only one-to-two-step tasks is incompatible  
21 with level-two reasoning, but the RFC in this case contains no such limitation. *See Rounds v.*  
22 *Comm'r of Social Sec. Admin.*, 807 F.3d 996, 1003-04 (9th Cir. 2015).

1 Plaintiff cites no authority indicating that an RFC restriction to “short, simple  
2 instructions” is incompatible with level-two reasoning, but argues that, logically, the additional  
3 limitation to “short” instructions suggests that Plaintiff is more limited than someone who can  
4 perform “simple instructions,” and thus because he is more limited than someone who can  
5 perform simple instructions (which has been found compatible with level-two reasoning), he  
6 should be considered restricted to level-one reasoning. (Dkt. # 14 at 1-2.) The Court does not  
7 find this reasoning persuasive, because a restriction to “short” instructions is not necessarily  
8 incompatible with the DOT’s reference to “uninvolved” instructions in level-two reasoning.  
9 Plaintiff suggests that “short” instructions are fewer in number and less complex (dkt. # 14 at 1);  
10 the Court does not agree that short instructions are necessarily fewer in number, but even  
11 assuming they are less complex, level-two reasoning contemplates “uninvolved” instructions,  
12 and it is not clear how “uninvolved” instructions would be necessarily incompatible with “short,  
13 simple” instructions.

14 Furthermore, the Ninth Circuit and district courts in the circuit have rejected Plaintiff’s  
15 argument in unpublished decisions, which persuades the Court that Plaintiff’s argument is not as  
16 logical as he suggests. *See Ranstrom v. Colvin*, 622 Fed. Appx. 687, 688-89 (9th Cir. Nov. 16,  
17 2015) (“There is no appreciable difference between the ability to make simple decision based on  
18 ‘short, simple instructions’ and the ability to use commonsense understanding to carry out  
19 ‘detailed *but uninvolved* . . . instructions,’ which is what Reasoning Level 2 requires.” (emphasis  
20 in original)); *Vicki M. v. Saul*, 2019 WL 5784592, at \*6 (W.D. Wash. Nov. 6, 2019) (finding “no  
21 conflict between the RFC limitation to short and simple instructions” and the ability to carry out  
22 jobs requiring level-two reasoning); *Cortez v. Comm’r of Social Sec. Admin.*, 2018 WL 1173424,  
23 at \*4 (D. Or. Mar. 3, 2018) (“[A] plaintiff who is limited to ‘short, simple instructions’ is capable

1 of performing a job requiring Level 2 reasoning.” (quoting *Patton v. Astrue*, 2013 WL 705909, at  
2 \*1 (D. Or. Feb. 25, 2013)); *George v. Berryhill*, 2017 WL 1709599, at \*6 (C.D. Cal. Apr. 30,  
3 2017) (holding that a doctor’s finding that a claimant could follow “very short and simple  
4 instructions” suggested that the claimant was not limited to performing only one-to-two-step  
5 tasks). Accordingly, the Court finds no conflict between the ALJ’s RFC assessment and the VE’s  
6 testimony that Plaintiff could perform jobs requiring level-two reasoning.

7 **V. CONCLUSION**

8 For the foregoing reasons, the Commissioner’s final decision is **AFFIRMED** and this  
9 case is **DISMISSED** with prejudice.

10 Dated this 3rd day of February, 2020.

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12 MICHELLE L. PETERSON  
13 United States Magistrate Judge  
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